



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,622	07/05/2000	Gregory D. Sunvold	IAM 0602 PA	4085

7590

01/31/2003

SCHWEGMAN, LUNDBERG, WOESSNER AND KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER

COE, SUSAN D

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 01/31/2003

21

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/609,622

Applicant(s)

SUNVOLD ET AL.

Examiner

Susan Coe

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-13 and 15-24 is/are pending in the application.
- 4a) Of the above claim(s) 10-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Art Unit: 1654

DETAILED ACTION

1. Claims 10-13 and 15-24 are currently pending.
2. Claims 10-13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6, dated April 23, 2001.
3. Claims 15-24 are examined on the merits.

Claim Rejections - 35 USC § 103

4. Claims 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,626,849, the Purina CNM Veterinary Product Guide (published in 1994 by the Ralston Purina Company), and US Pat. No. 5,240,962 for the reasons set forth on page 4 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that there is no motivation to combine the references together to form a pet food because US '849 is only directed towards humans and because this reference does not have any experimental data. In addition, applicant argues that there would be no motivation to substitute the corn from Purina with the barley and sorghum of US '962. Applicant also argues that there is no reasonable expectation of success or motivation in the references to combine them together to arrive at the claimed invention. However, the Purina product guide clearly teaches a weight loss pet food that contains grains, specifically corn, and vitamin supplements. US '962 teaches that barley and sorghum can be used interchangeably

Art Unit: 1654

with corn in a weight loss feed composition (see column 5, lines 30-34). Therefore, there would be motivation to use barley and sorghum in the Purina pet food based on this disclosure of equivalence by US '962. In addition, the Purina pet food contains dietary supplements. US '849 teaches using the dietary supplements carnitine and chromium to promote weight loss. US '849 teaches that these supplements work on mammals in general (see column 1, line 67); therefore, a person of ordinary skill in the art would reasonably expect that the supplements would function to promote weight loss in pets and would be motivated to add them to the Purina pet food. The fact that US '849 does not show specific scientific data is not considered to teach away from using this ingredients to promote weight loss because the reference teaches that these ingredients are known in the art to have these effects (see column 1, lines 23-45). Therefore, there is considered sufficient motivation to combine the references to arrive at the claimed invention.

Applicant also argues that the claimed composition shows unexpected results based on the Examples in the specification. However, it is difficult to analyze the data submitted by applicant because applicant has not disclosed with any detail the ingredients of the two diets that are compared. In addition, Diet B uses a specific type of chromium, chromium tripicolinate, which shows that the Diet in the specification has a different scope than the claimed diet. Furthermore, it is unclear if applicant's composition functions unexpectedly because the prior art shows that all of the claimed ingredients are able to promote weight loss. A food with these ingredients would be expected to promote weight loss when compared with a pet food with different ingredients.

Applicant also argues that the claimed composition is patentable because the prior art does not teach that using barley and sorghum function better than the grains in the prior art.

Art Unit: 1654

Firstly, it is not clear from applicant's data that barley and sorghum do function better.

Secondly, as discussed above, there is considered to be sufficient motivation in the prior art to use these grains in the composition. Therefore, since the prior art is considered to teach the claimed composition any advantages would be present in the composition taught.

5. No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


Application/Control Number: 09/609,622

Page 5

Art Unit: 1654

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner
January 27, 2003



FRANCISCO PRATS
PRIMARY EXAMINER